

Assembly Bill No. 1398

CHAPTER 509

An act to amend Sections 42469.1, 42649.3, 43209, 44012, and 44307 of, and to add Section 43200.5 to, the Public Resources Code, relating to solid waste.

[Approved by Governor October 3, 2013. Filed with
Secretary of State October 3, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1398, Committee on Natural Resources. Solid waste: recycling: enforcement agencies.

(1) The California Integrated Waste Management Act of 1989 (act) requires a business, which is defined as a commercial or public entity, that generates more than 4 cubic yards of commercial solid waste per week or is a multifamily residential dwelling of 5 units or more, to arrange for recycling services. Existing law also requires jurisdictions to implement a commercial solid waste recycling program meeting specified elements. Existing law defines commercial solid waste by reference to a specified regulation.

This bill instead would define commercial solid waste to include all types of solid waste generated by a store, office, or other commercial or public entity source, including a business or a multifamily dwelling of 5 or more units, thereby imposing a state-mandated local program by imposing new requirements upon local jurisdictions.

(2) The act provides for the designation of an enforcement agency under specified procedures, including by the board of supervisors of a county for purposes of the county, by the county and the cities within the county pursuant to a joint exercise of powers agreement, by a city council for purposes of the city, or by the board of supervisors of a county for purposes of the unincorporated area of the county. Existing law requires the Department of Resources Recycling and Recovery to prepare and adopt certification regulations for local enforcement agencies.

This bill would deem the enforcement agency to be carrying out a state function governed by the act when exercising the authority or fulfilling the duties specified in certain provisions of the act. The bill would deem the enforcement agency, in carrying out this state function, to be independent from the local governing body, and the enforcement agency's actions would not be subject to the authority of the local governing body. The bill would make an enforcement agency, with regard to an action that it is authorized or required to take by a state law or local ordinance, which is not otherwise authorized or required by certain provisions of the act, subject only to that local ordinance or state law.

(3) Existing law requires enforcement agencies to perform specified functions with regard to solid waste handling and the issuance and enforcement of solid waste facilities permits, including establishing and maintaining an enforcement program. Existing law allows the enforcement agency to establish specific local standards for solid waste handling and disposal and requires these standards to be consistent with the act.

This bill would require those specific local standards for solid waste handling and disposal to be incorporated into the enforcement agency's enforcement program and approved by the department.

(4) Existing law requires the enforcement agency, when issuing or revising a solid waste facilities permit, to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage and that the long-term protection of the environment is the guiding criterion.

This bill would authorize the enforcement agency, when issuing or revising a solid waste facilities permit, to impose those terms and conditions on a solid waste facilities permit that it deems necessary and appropriate to govern the design and operation of the solid waste facility, for purposes of implementing those policies specified above.

(5) Existing law requires an enforcement agency to hold a hearing upon a petition regarding an alleged failure to act as required by law.

This bill would instead require the enforcement agency to hold that hearing upon a petition alleging a failure to act pursuant to specified provisions of the act, or the regulations adopted pursuant to specified provisions of the act, thereby imposing a state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 42649.1 of the Public Resources Code is amended to read:

42649.1. For purposes of this chapter, the following terms shall apply:

(a) "Business" means a commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity, or a multifamily residential dwelling.

(b) "Commercial solid waste" includes all types of solid waste generated by a store, office, or other commercial or public entity source, including a business or a multifamily dwelling of five or more units.

(c) "Commercial waste generator" means a business subject to subdivision (a) of Section 42649.2.

(d) “Self-hauler” means a business that hauls its own waste rather than contracting for that service.

SEC. 2. Section 42649.3 of the Public Resources Code is amended to read:

42649.3. (a) On and after July 1, 2012, each jurisdiction shall implement a commercial solid waste recycling program appropriate for that jurisdiction designed to divert commercial solid waste from businesses subject to Section 42649.2, whether or not the jurisdiction has met the requirements of Section 41780.

(b) If a jurisdiction already has a commercial solid waste recycling program as one of its diversion elements that meets the requirements of this section, it shall not be required to implement a new or expanded commercial solid waste recycling program.

(c) The commercial solid waste recycling program shall be directed at a commercial waste generator, as defined in subdivision (c) of Section 42649.1, and may include, but is not limited to, any of the following:

(1) Implementing a mandatory commercial solid waste recycling policy or ordinance.

(2) Requiring a mandatory commercial solid waste recycling program through a franchise contract or agreement.

(3) Requiring all commercial solid waste to go through either a source separated or mixed processing system that diverts material from disposal.

(d) The commercial solid waste recycling program shall include education, outreach to, and monitoring of, businesses. A jurisdiction shall notify a business if the business is not in compliance with Section 42649.2.

(e) The commercial solid waste recycling program may include enforcement provisions that are consistent with a jurisdiction’s authority, including a structure for fines and penalties.

(f) The commercial solid waste recycling program may include certification requirements for self-haulers.

(g) The department shall review a jurisdiction’s compliance with this section as part of the department’s review required by Section 41825. Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification, and monitoring, and if applicable, enforcement efforts, by providing updates in the annual report required by Section 41821.

(h) The department may also review whether a jurisdiction is in compliance with this section at any time that the department receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, a commercial recycling program.

(i) During its review pursuant to subdivision (g) or (h), the department shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For purposes of this section, “good faith effort” means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program. During its review, the department may include, but is not limited to, the following factors in its evaluation of a jurisdiction’s good faith effort:

(1) The extent to which businesses have complied with Section 42649.2, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to service.

(2) The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, all information, methods, and calculations, and any additional performance data, as requested by the department from the material recovery facilities pursuant to Section 18809.4 of Title 14 of the California Code of Regulations.

(3) The extent to which the jurisdiction is conducting education and outreach to businesses.

(4) The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance.

(5) The availability of markets for collected recyclables.

(6) Budgetary constraints.

(7) In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets.

SEC. 3. Section 43200.5 is added to the Public Resources Code, to read:

43200.5. (a) An enforcement agency that has been designated by the local governing body and certified by the department pursuant to this chapter has the authority provided, and the duties required, by this part, Part 5 (commencing with Section 45000), and Part 6 (commencing with Section 45030).

(b) When exercising the authority and fulfilling the duties specified in subdivision (a), an enforcement agency is deemed to be carrying out a state function that is governed by this division. In carrying out this state function, an enforcement agency is deemed to be independent from the local governing body, and the enforcement agency's actions in carrying out this state function is not subject to the authority of the local governing body.

(c) If an enforcement agency is authorized or required to take an action by a state law or local ordinance and that action is not otherwise authorized or required by this part, Part 5 (commencing with Section 45000), or Part 6 (commencing with Section 45030), the enforcement agency, with regard to that action, is governed only by that local ordinance or state law, respectively, in exercising that authority or carrying out that requirement and is not governed by this division.

SEC. 4. Section 43209 of the Public Resources Code is amended to read:

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, permitting, and training programs.

(e) (1) Establish and maintain an enforcement program consistent with regulations adopted by the board to implement this chapter, the standards adopted pursuant to this chapter, and the terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(2) The enforcement agency may establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body, by resolution or ordinance, if those standards are incorporated into the enforcement program specified in paragraph (1) and are approved by the department.

(3) A standard established pursuant to this subdivision shall be consistent with this division and all regulations adopted by the board.

(f) Keep and maintain records of its inspection, enforcement, permitting, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) (1) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards.

(2) The consultation required by this subdivision shall include affording the health agency adequate notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

(h) Establish and maintain an inspection program.

(1) The inspection program required by this subdivision shall be designed to determine whether any solid waste facility is operating under any of the following:

(A) The facility is operating without a permit.

(B) The facility is operating in violation of state minimum standards.

(C) The facility is operating in violation of the terms and conditions of its solid waste facilities permit.

(D) The facility may pose a significant threat to public health and safety or to the environment, based on any relevant information.

(2) The inspection program established pursuant to this subdivision shall also ensure frequent inspections of solid waste facilities that have an established pattern of noncompliance with this division, regulations adopted pursuant to this division, or the terms and conditions of a solid waste facilities permit. The inspection program may include public awareness activities, enforcement to prevent the illegal dumping of solid waste, and the abatement of the illegal dumping of solid waste.

SEC. 5. Section 44012 of the Public Resources Code is amended to read:

44012. (a) When issuing or revising a solid waste facilities permit, the enforcement agency shall ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and that the long-term protection of the environment is the guiding criterion.

(b) When issuing or revising a solid waste facilities permit, an enforcement agency may impose those terms and conditions on a solid waste facilities permit that it deems necessary and appropriate to govern the design

and operation of the solid waste facility, for purposes of implementing the requirements of subdivision (a).

(c) The terms and conditions of the solid waste facilities permit imposed by an enforcement agency pursuant to this section shall be consistent with the enforcement policy adopted pursuant to subdivision (e) of Section 43209 and shall be consistent with this division.

SEC. 6. Section 44307 of the Public Resources Code is amended to read:

44307. From the date of issuance of a permit that imposes conditions that are inappropriate, as contended by the applicant, or after the taking of any enforcement action pursuant to Part 5 (commencing with Section 45000) by the enforcement agency, the enforcement agency shall hold a hearing, if requested to do so, by the person subject to the action. The enforcement agency shall also hold a hearing upon a petition to the enforcement agency from any person requesting the enforcement agency to review an alleged failure of the agency to act as required by this part, Part 5 (commencing with Section 45000), or Part 6 (commencing with Section 45030) or a regulation adopted by the department pursuant to this part, Part 5 (commencing with Section 45000), or Part 6 (commencing with Section 45030). A hearing shall be held in accordance with the procedures specified in Section 44310.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.